Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ANTHONY V. CRUZ

Appeal No. 2003-0240
Application No. 09/435,507

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to the appellant's request for rehearing[1] of our decision mailed April 30, 2003, wherein we affirmed the examiner's rejection of claims 1, 8, 15 and 16 under 35 U.S.C. § 102(b), affirmed the examiner's rejection of claims 6 and 13 under 35 U.S.C. § 103, reversed the examiner's rejection of claims 2 to 5 and 9 to 12 under

[1] Filed June 30, 2003.

35 U.S.C. § 102(b) and reversed the examiner's rejection of claims 7 and 14 under 35 U.S.C. § 103.

We have carefully considered the argument raised by the appellant in their request for rehearing, however, that argument does not persuade us that our decision was in error in any respect.

The sole argument (pp. 2-3) raised by the appellant is that claim 1, the only independent claim in this application, specifies that the front face of the wall mount has "a switch-engaging surface portion adapted to engage said switch operating member to open said switch as said appliance is assembled onto said wall mount . . ." and that such a construction is not shown by Andis. The appellant contends that the holder 17 of Andis has faces (e.g., laterally spaced walls or surfaces 95 and 97) which are neither front faces nor rear faces but are faces located on planes perpendicular to wall 13. The appellant points out that the hair dryer of Andis must be turned sideways so that its off/on switch 21 engages the wall 95 which is in contrast to the appellant's construction.

In our view, the claimed limitation that the front face of the wall mount has "a switch-engaging surface portion adapted to engage said switch operating member to open

said switch as said appliance is assembled onto said wall mount . . ." is readable on[2] Andis as set forth on pages 4-5 of our decision mailed April 30, 2003. In that regard, the claimed wall mount is readable on Andis' holder 17 which has a front face (the face appearing in Figures 1 and 2) and a rear face (the face not shown in Figures 1 and 2, which face confronts the wall 13), wherein the front face of Andis' holder 17 has a switch-engaging surface 95 adapted to engage the switch member 45 to open the switch 21 as the hair dryer is assembled onto the holder 17 in the event an attempt is made to assemble the hair dryer on the holder when the switch 21 is closed and the hair dryer is, therefore, energized.

While the holder 17 of Andis has laterally spaced walls or surfaces 95 and 97 on the front thereof, it is our opinion that such surfaces are part of the front face of the holder 17. In addition, while it is true that the hair dryer of Andis must be turned sideways so that its off/on switch 21 engages the wall 95 (which contrasts to the appellant's disclosed construction), we see nothing in claim 1 which distinguishes claim 1 from Andis. It is axiomatic that, in proceedings before the USPTO, claims in an application are to be given

---

[2] The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

their broadest reasonable interpretation[3] and limitations are not to be read into the claims from the specification.[4]

In view of the above, the appellant's argument that the anticipation rejection is improper is unconvincing.

In light of the foregoing, the appellant's request for rehearing is granted to the extent of reconsidering our decision, but is denied with respect to making any change thereto.

---

[3] See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

[4] See In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REQUEST FOR REHEARING - DENIED

IRWIN CHARLES COHEN
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

ROGER S. DYBVIG
22 GREEN STREET
DAYTON, OH 45402

JVN/jg